



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,858	10/31/2003	Gary T. Seim	GUID.014US01	9341
51294	7590	02/22/2010	EXAMINER	
HOLLINGSWORTH & FUNK 8500 Normandale Lake Blvd SUITE 320 MINNEAPOLIS, MN 55437			HOLMES, REX R	
			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			02/22/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/698,858	Applicant(s) SEIM ET AL.	
	Examiner REX HOLMES	Art Unit 3762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _ (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,4,6,13-15,18,20,21,29,30,33,36,39-41,48-50,53,55,58,60,63 and 64.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☒ Other: The broadening of claim 64 by removing comprises does not change the rejection and the claim is still rejected under the reasoning provided in the final office action dated 12/8/09.

/George R Evanisko/
 Primary Examiner, Art Unit 3762

Continuation of 11. does NOT place the application in condition for allowance because: The Applicants argue that Klepfer in view of Levine fails to disclose disabling ATP therapy and delivering non atrial tracking therapy. As pointed out by the Applicant Klepfer discloses in Paragraph 85 that the stimulation therapy can be adjusted and then can be restarted after the adjustment. Klepfer further discloses that one of the many therapies available in the system are non-atrial tracking pacing therapies such as VVI and DDI therapies (e.g. 59, Claims 12 and 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy that the system switches to after ATP therapy as taught by Klepfer e.g. 85, with one of the other therapies as disclosed by Klepfer that does not require an atrial sensing lead, since such a modification would provide the predictable results of switching the therapy from one that requires an atrial lead to another therapy that does not require an atrial lead for providing stimulation to the heart after the device withholds ATP therapy due to atrial lead failure. The Applicant further argues that Klepfer may teach changing therapies but the language of the specification states that the therapy is restarted and therefore the previous therapy is restarted and not the changed therapy. The Examiner respectfully disagrees. The language of paragraph 85 states that the therapy is adjusted and once adjusted the therapy may be restarted, as in the newly adjusted therapy. There would be no need to adjust the therapy if the process just reused the previous therapy. The Applicant next argues that Klepfer fails to determine a lead related condition as the lead related conditions listed in paragraph 111 do not utilize the procedure of paragraph 85. It is noted that step 485 as disclosed in paragraph 85 which clearly states that additional diagnostic procedures known in the art are performed in step 485 after detecting the abnormal beat, such as, ... diagnosing a lead-related problem. It is noted that Paragraph 111 was used to show the types of known lead-related problems and procedures for detecting problems that are known in the art. Therefore the teachings of Klepfer in view of Levine show and teach each and every element of the claim. Regarding claim 20, the claim states that the disabling ATP therapy deliver in response to any of the... Thus, the claim only requires one of the cases to be true to disable, not all of the cases. Therefore, based on the arguments above and the rejections dated 2/3/10, the claim is properly rejected.